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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/867,614	05/31/2001	Yuko Tamaki	35.G2820	7059
5514	7590	08/23/2005	EXAMINER	
FITZPATRICK CELLA HARPER & SCINTO			ASTORINO, MICHAEL C	
30 ROCKEFELLER PLAZA			ART UNIT	
NEW YORK, NY 10112			PAPER NUMBER	
			3736	

DATE MAILED: 08/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/867,614

Applicant(s)

TAMAKI ET AL.

Examiner

Michael C. Astorino

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 145, 146, 149-151, 153-155, 158-160, 162, 163, 166-168 and 172-181 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 145, 146, 149-151, 153-155, 158-160, 162, 163, 166-168 and 172-181 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The examiner acknowledges the amendment filed during March, April and May of 2005. Claims 145, 146, 149 to 151, 153 to 155, 158 to 160, 162, 163, 166 to 168 and 172 to 181 are pending in the application, with Claims 176 to 181 having been added.

The indicated allowability of claims 145, 146, 149 to 151, 153 to 155, 158 to 160, 162, 163, 166 to 168 and 172 to 175 are withdrawn in view of the newly discovered reference(s) to Walker et al. US Patent Number 6,302,844 B1 and Dutta US 2002/0077953. Rejections based on the newly cited reference(s) follow.

Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

In regards to claims 145, 146, 149 to 151, 153 to 155, 158 to 160, 162, 163, 166 to 168 and 172 to 181, only those claims using “means for” or “step for” modified by some functional language, as long as it is not modified by sufficient structure, material, or acts for achieving the specified function, will invoke 112.6th paragraph. For example, “step of” or “processing means”, does not invoke 112.6th paragraph. If the applicant chooses to invoke 112.6th paragraph without using “means for” or “step for”, applicant may do so by explicitly stating so in the subsequent response to this office action. In this application claims 149 and 172, cash-back step, and claims 158 and 174, cash back means do not invoke 112.6th paragraph.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 145, 146, 150 to 151, 153 to 155, 159 to 160, 162, 163, 166 to 167, 173, and 175 to 181 are rejected under 35 U.S.C. 102(e) as being anticipated by Walker et al. US Patent Number 6,302,844 B1.

Claim 145. A body temperature managing method comprising:

a body temperature data obtaining step for obtaining body temperature data; (col. 4, lines 58-54)

a body temperature data storing step for storing said body temperature data obtained in said obtaining step; (126 memory)

a body temperature data analyzing step for analyzing body temperature data based on said body temperature data stored in said storing step; (column 5, lines 45-67 and col. 6, lines 1-2)

an analyzed data transmitting step for outside transmitting of analyzed data analyzed in said analyzing step; (column 5, lines 45-67 and col. 6, lines 1-2; data path P1) and

a presenting step for presenting a list of facilities according to the analysis results analyzed in said body temperature data analyzing step. (step 916, col. 15, lines 44-67, and col.

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16, lines 23; 916 represents a list of doctors, each doctor is representative of a facility, otherwise stated a doctor's office.)

In regards to claim 154 and 163, the rejection is on the same basis as claim 145.

In regards to claims 146 and 155, the device of Walker et al. monitors continuously and as such will also monitor parameters including body temperature during in the morning before rising or moving about or eating anything, otherwise stated as basal body temperature.

Claim 150. A body temperature managing method according the Claim 145, said analyzed data transmitting step comprising:

a second transmitting step for transmitting analyzed data to a facility selected from said facility list presented in said presenting step (figure 1, data path E2); and

an obtaining step for obtaining results diagnosed based on said body temperature data at said facility. (step 1012, send telemetry data, medical records and patient references to physicians)

In regards to claims 159 and 168, the rejection is on the same basis as claim 150.

Claim 151. A body temperature managing method according the Claim 145, wherein the destination of transmission of said analyzed data transmitted in said analyzed data transmitting step is one of at least a personal computer, cell phone, or a portable terminal. (110-1 through 110-N; column 4, lines 33-47).

In regards to claims 160 and 166, the rejection is on the same basis as claim 151.

In regards to claim 153, see rejection is on the same basis as 145. Additionally, the means for storing said enciphered body temperature data and deciphering data is taught in column 3, lines 57-58 and the arbitrary destination is synonymous with physician terminal

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devices 110-2 through 110-N. In regards to claims 162, 176, 177, 178, 179, 180, and 181 the rejections are on the same basis as 153.

In regards to claims 173 and 175, all of the limitations excluding those regarding transmission to the hospital selected from a hospital list are rejected on the same basis as claim 145. As to the limitations regarding transmission to the hospital selected from a hospital list see column, 21, lines 27-67 and column 22, lines 1-13.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 149, 158, and 167 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. US Patent Number 6,302,844 B1 as applied to claims 147, 154 and 163 above, and further in view of Dutta US 2002/0077953.

Walker et al. teaches counting step/means via the transmission of data to the physician who accepts the case, but does not teach a cash-back step. Getting cash back when a service is not sufficiently provided is a tenet of sales since humans have exchanged money for services. The most common vehicle for a business is a return of cash or credit to the original purchaser. This practice is well known in the business community and would follow in the e-commerce world of today. Dutta, a reference related to reimbursement procedures in e-commerce, teaches a cash back step/means when a reservation/service is not fulfilled. (see paragraph [0066]).

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Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have added the step/means of giving those cash-back for services not adequately performed as taught in Dutta in view of the system and method of patient care delivery of Walker et al. so as to properly refund money in an e-commerce system and/or business method.

Claims 172, and 174 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. US Patent Number 6,302,844 B1 in view of Dutta US 2002/0077953.

In regards to claims 172 and 174, all of the limitations excluding the counting step/means and the cash-back step/means are rejected on the same basis as claim 145. As to the counting step/means and the cash-back step/means Walker et al. teaches counting step/means via the transmission of data to the physician who accepts the case, but does not teach a cash-back step. Getting cash back when a service is not sufficiently provided is a tenet of sales since humans have exchanged money for services. The most common vehicle for a business is a return of cash or credit to the original purchaser. This practice is well known in the business community and would follow in the e-commerce world of today. Dutta, a reference related to reimbursement procedures in e-commerce, teaches a cash back step/means when a reservation/service is not fulfilled. (see paragraph [0066]). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have added the step/means of giving those cash-back for services not adequately performed as taught in Dutta in view of the system and method of patient care delivery of Walker et al. so as to properly refund money in an e-commerce system and/or business method.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Michael C Astorino** whose telephone number is **571-272-4723**. The examiner can normally be reached on Monday-Friday, 8:30AM to 3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael Astorino
August 18, 2005


MAX F. HINDENBURG
CUSTOMER SERVICE PATENT EXAMINER
TECHNOLOGY CENTER 3700